

**Notice of Allowability**

Application No.

10/091,424

Examiner

Charlie C. Agwumezie

Applicant(s)

KIRSHENBAUM ET AL.

Art Unit

3621

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to communication filed 09/10/07.
2. ☒ The allowed claim(s) is/are 1 and 3-35.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Charlie C.L. Agwumezie  
Patent Examiner  
Art Unit 3621

## **DETAILED ACTION**

### **Acknowledgments**

1. Applicants' supplemental amendment filed on September 10, 2007 is acknowledged. Accordingly claims 1, and 3-35 have been examined and is allowed.

### **EXAMINER'S AMENDMENT**

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joseph G. Swan on December 6, 2007 and including the changes made by the supplemental amendment filed on September 10, 2007.

3. The Application has been amended as follows: Claims 32, 33 and 35 have been amended as follows:

32. (Currently Amended) A computer readable medium containing ~~code sections~~ computer executable instructions for categorizing a customer, said ~~medium~~ instructions comprising:

a first code section that receives a business-specific rule set from a business;

a second code section that inputs customer-specific information and stores said information in memory;

a third code section categorizing that categorizes a customer, wherein the third code section uses the business-specific rule set received by the receiving first code section and customer-specific information stored in memory, said categorization resulting in a customer category code; and

a fourth code section sending that sends the customer category code to the business, wherein the sending guards the customer-specific information stored in memory from being sent to the business~  
wherein the third code section generates the category\_ code.

33. (Currently Amended) A computer readable medium containing ~~code sections~~ computer executable instructions for use in a promotional device utilizing customer categories, said ~~medium~~ instructions comprising:

a first code section that detects a customer-controlled categorization device;

a second code section that sends a business-specific rule set to the customer-controlled categorization device; and

a third code section that receives a customer category from the customer-controlled categorization device, wherein the customer category was generated using the business-specific rule set and customer-specific information stored in memory in the customer-controlled categorization device: and

a fourth code section that generates a category\_ code.

35. (Currently Amended) A computer-readable medium storing computer-executable ~~process steps~~ instructions for providing customer information, said ~~process steps~~ instructions comprising:

obtaining and storing customer information; receiving business-specific decision procedures from different businesses;

receiving a particular business-specific decision procedure from a requesting business; and processing the customer information based on said particular business-specific decision procedure, subject to specified customer privacy criteria, in order to obtain processed customer information; and

sending the processed customer information to the requesting business; and generating a customer category\_ code.

4. Claims 1, and 3-35 have been allowed.

***Reasons for Allowance***

3. The following is an examiner's statement of reasons for allowance:

The closest prior art of records are U.S. Patent No. 6,901,373 to Chasko and U.S. Patent Application Publication 2002/0147766 to Vanska.

4. Regarding the claimed terms, the Examiner notes that a "general term must be understood in the context in which the inventor presents it." In re Glaug F.3d 1335,

1340, 62 USPQ2d 1151, 1154 (Fed. Cir. 2002). Therefore the Examiner must interpret the claimed terms as found on pages 1-24 of the specification. Clearly almost all the general terms in the claims may have multiple meanings. So where a claim term "is susceptible to various meanings, ... the inventor's lexicography must prevail...." *Id.* Using these definitions for the claims, the claimed invention was not reasonably found in the prior art.

5. The primary reference Chasko (U.S. Patent No. 6,901,373) discloses a barcode scanner, and a smart interface at a checkout stand to track customer purchase habits. The smart card includes memory for storing accumulated values in each of several profit categories and a second processor for executing instructions. The first processor transfers data to and from the smart card. The smart card while coupled to the first processor, transfers stored category values containing accumulated purchase values in each of the different profit margin ranges stored in the processor.

Chasko however failed to disclose a non-merchant controlled device generating a category code based on a business-specific decision procedure that has been provided by a merchant-controlled means. Chasko also failed to disclose a merchant controlled means for providing the business-specific decision procedure to the non-merchant-controlled device as well as a customer controlled means for specifying the criteria used to keep information private as recited by applicant's independent claims.

6. Vanska discloses a system and method that manages user privacy in a network environment through a distributed user system including a user device and profile operator. The management of user privacy involves recognizing one or more service

opportunities of a service operator on a user device operated by the user, determining a privacy level at which communication is conducted with the service operator relating to one or more service opportunities on the user device, transmitting the profile access to the service operator and enabling service operator to obtain a subset of profile information of the user according to the profile access level.

Vanska however failed to disclose a non-merchant controlled device generating a category code based on a business-specific decision procedure that has been provided by a merchant-controlled means. While Vanska's management of user privacy involves recognizing one or more service opportunities of a service operator on a user device operated by the user, Vanska failed to disclose a first merchant controlled means for providing the business-specific decision procedure to the non-merchant-controlled device as recited by applicant's independent claims.

7. Moreover, the missing claimed elements from Chasko are not found in a reasonable number of reference(s). Yet even if the missing claimed elements were found in a reasonable number of references, a person of ordinary skill in the art at the time the invention was made would not have been motivated to include these missing elements in an embodiment in the Chasko disclosure because: such would have changed the basic working principles and the operation of Chasko which requires categorization based accumulated purchase values in each of the different profit margin ranges stored in the processor rather than the combination of customer information and business specific criteria as specified by the independent claims.

In an effort to justify the reasons for allowance of the applicant claims, applicant and examiner jointly agreed to the amended claims as recited in the independent claims of the supplemental amendment. Therefore the claims are allowable as amended over the closest prior arts of record as discussed above.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

9. The prior arts made of record and not relied upon is considered pertinent to applicants disclosure.

- Walker et al (U.S. Patent Application Publication No. 2004/0117261 A1) discloses Methods and Apparatus for determining a progressive discount for a customer based on the frequency of the customer's transactions.
- McCollom et al (U.S. Patent No. 6,343,274 B1) discloses Apparatus and Method for merchant-to-consumer advertisement communication system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on **(571) 272 – 6712**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Andrew Fischer** can be reached on **(571) 272 – 6779**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Charlie Lion Agwumezie**  
**Patent Examiner**  
**Art Unit 3621**

**Acc**  
**December 6, 2007.**



**ANDREW J. FISCHER**  
**SUPERVISORY PATENT EXAMINER**  
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